



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency:

- ☒ Preproposal Statement of Inquiry was filed as WSR 06-18-005; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

Changes to voter registration procedures based on required changes by the Help America Vote Act.

Hearing location(s):

Office of the Secretary of State
Elections Division
520 Union Ave. SE
Olympia, WA 98501
(360) 902-4180

Submit written comments to:

Name: Tami Neilson
Address: PO Box 40220, Olympia WA 98504
e-mail tneilson@secstate.wa.gov
fax (360)664-4619 by (date) December 6, 2006

Date: December 6, 2006 Time: 10:00 a.m.

Assistance for persons with disabilities: Contact

Tami Neilson by December 5, 2006

TTY (800) 422-8683

Date of intended adoption: January 3, 2007

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: United States district court for the western district of Washington issued a preliminary injunction on August 1, 2006, enjoining enforcement of RCW 29A.08.107. *Washington Association of Churches, et al. v. Sam Reed* No.C06-0726RSM. These rules implement this injunction and the following will occur: If a voter provides identification when registering to vote but the identification does not pass the matching process required by the Help America Vote Act, the voter will be placed on the registration list. The voter must provide appropriate identification prior to or at the time of voting. Provisional ballots will be issued to these voters not providing identification prior to or at the time of voting. These provisional ballots may be counted if the voter provides appropriate identification no later than the day before the election is certified.

Statutory authority for adoption: RCW 29A.04.611**Statute being implemented:****Is rule necessary because of a:**

- Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☒ Yes ☐ No
State Court Decision? ☐ Yes ☒ No

If yes, CITATION:

Washington Association of Churches, et al.
v. Sam Reed No. C06-0726RSM

DATE

October 20, 2006

NAME (type or print)

Nixon Handy

SIGNATURE**TITLE**

Director of Elections

CODE REVISER USE ONLY

OFFICE OF THE CLERK
STATE OF WASHINGTON
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06-0726-008

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)
Office of the Secretary of State, Elections Division

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Katie Blinn	PO Box 40220, Olympia, WA 98504	(360) 902-4168
Implementation....Katie Blinn	PO Box 40220, Olympia, WA 98504	(360) 902-4168
Enforcement..... Katie Blinn	PO Box 40220, Olympia, WA 98504	(360) 902-4168

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain:

NEW SECTION

WAC 434-250-045 Voters requiring verification of identity.

(1) If the voter registration record of an absentee voter is flagged as requiring verification of identity, a notice must be sent at the time of the election explaining that a photocopy of identification must be provided in order for the ballot to be counted, and listing what forms of identification are acceptable. The county auditor may provide an inner envelope separate from the security envelope for return of the photocopy of the identification.

(2) The notice to the absentee voter must be in substantially the following form:

Dear Voter:

[date]

Based on your recent registration, federal law requires that you provide identification with your ballot. **If you fail to provide identification, your ballot will not be counted.**

Please provide a copy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document that shows both your name and address.

You may return the photocopy with your ballot but, in order to protect the secrecy of your ballot, do not place the photocopy inside the security envelope.

If you do not provide a copy of your identification, your ballot will not be counted.

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

(3) If the voter provides one of the acceptable forms of identification no later than the day before certification of the election, the flag on the voter registration record must be removed and the ballot must be counted.

(4) If the voter fails to provide one of the acceptable forms of identification by the day prior to certification of the election, the ballot may not be counted. If the voter provides one of the acceptable forms of identification at a later date, the ballot cast in that election may not be counted but the flag on the voter registration record must be removed.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-253-024 (~~Contents of~~) Poll book of registered voters. (1) Poll books must be printed utilizing information from the official statewide voter registration data base. The poll book of registered voters must contain the name, residence address, sex, month and day of birth, and county voter registration number of each voter in the precinct, a listing of the districts in which that voter resides, and a designation of the applicable county, legislative district, and precinct, or a ballot code identifying this information. The names must be listed alphabetically by last name. The list must contain a space for each voter to sign his(~~/~~) or her name and to verify his(~~/~~) or her current address, and a space for the inspector or judge to credit the voter with having participated in a particular election.

(2) The auditor may eliminate from poll books ongoing absentee voters and voters requesting absentee ballots for that election. The poll book must clearly indicate whether or not absentee voters are included on the list. If they are included, a notation must be made next to each absentee voter's name.

(3) The list must include a notation for each registered voter who failed to satisfy the identity verification requirement during the registration process. Such a voter must be issued a provisional ballot, and the reason for the provisional ballot must be marked on the outer envelope, unless the voter first shows one of the following forms of identification, in which case the voter may be issued a regular ballot:

- (a) Valid photo identification;
- (b) A valid enrollment card of a federally recognized tribe in Washington;
- (c) A current utility bill;
- (d) A current bank statement;
- (e) A current government check;
- (f) A current paycheck; or
- (g) A government document that shows both the voter's name and address, other than a voter registration card.

(4) All voters must show one of the following forms of identification before signing the poll book:

- (a) Valid photo identification, such as a driver's license, state identification card, student identification card, or tribal identification card;
- (b) A voter registration card;
- (c) A current utility bill;
- (d) A current bank statement;
- (e) A current paycheck;
- (f) A government check; or

(g) Another government document.

Any individual who cannot provide one of the above forms of identification must be issued a provisional ballot.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-047 Provisional ballots--Disposition. Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election.

A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record.

Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If there is no record of the voter ever having been registered, the voter must be offered the opportunity to register and the provisional ballot is not counted.

(2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(3) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, the voter must be offered the opportunity to reregister and the provisional ballot is not counted.

(4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received for his or her precinct, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county, the auditor shall forward the ballot and a corresponding voter guide, or other means by which the ballot can be interpreted, to the supervisor of elections for the jurisdiction in which the voter is registered. The ballot must be forwarded within seven calendar days after a primary or special election and fifteen calendar days after a general election, and as soon as possible if past that date.

(6) If an absentee voter who voted a provisional ballot at the polls has already returned a voted absentee ballot, the provisional ballot is not counted. If the absentee voter who voted a provisional ballot at the polls has not returned a voted absentee ballot, the provisional ballot is counted. If a voted absentee ballot is returned after the provisional ballot has been counted, the absentee ballot is not counted.

(7) If the voter voted a provisional ballot because he or she failed to produce identification as required by RCW 29A.44.205 and pursuant to WAC 434-253-024(4), the ballot is counted if the signature on the envelope matches the signature in the voter registration record.

(8) If the voter voted a provisional ballot because the voter's registration record is flagged as requiring verification of identity, and the voter failed to provide identification pursuant to WAC 434-253-024(3) or 434-261-055, the provisional ballot is not counted.

(9) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-253-055

Identification.

NEW SECTION

WAC 434-261-055 Returned ballot lacking verification of identity. If a voter who still must verify his or her identity as part of the registration process votes an absentee or provisional ballot without providing adequate identification, the ballot cannot be counted unless the voter provides adequate identification no later than the day before certification of the election.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-262-031 Rejection of ballots or parts of ballots.

Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(1) Where two ballots are found folded together, or where a voter has voted more than one ballot;

(2) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(3) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent;

(4) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(5) Where the voter has voted for more candidates for an office than are permissible;

(6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;

(7) In the case of a partisan primary:

(a) For physically separate ballots:

(i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.

(ii) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank ballot of the same party the voter originally voted for.

(iii) When a party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures voted on both ballots, the nonpartisan votes that are the same on each ballot and the party votes shall be duplicated and counted.

(iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.

(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.

(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each

ballot shall be duplicated onto a nonpartisan ballot and counted.

(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

(b) For consolidated ballots:

(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.

(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.

(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.

(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.

Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-010 County election management system-- Applications for voter registration. (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration form in a format compatible with the official statewide voter registration data base:

- (a) Name;
- (b) Complete residential address;
- (c) Complete mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;
- (j) Dates upon which the individual has voted, if available;
- (k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number (~~((if he or she does not have a Washington state driver license or Washington state identification card))~~); and

(1) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who applies for voter registration by mail and sends a copy of ~~((an))~~ one of the alternative forms of identification listed in RCW 29A.08.113 for registration purposes, ~~((pursuant to RCW 29A.08.113,))~~ the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was ~~((sent))~~ provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3) Upon entry of an applicant's information, the auditor must check for duplicate entries.

(4) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-324-040 Data transfer to secretary and registration status. (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification(~~((, outlined in RCW 29A.08.107))~~). The secretary must assign the application a state identification number(~~((, and the application must remain in the county election management system in pending status until the applicant's identity has been verified))~~).

(2) If the applicant provided a Washington driver license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified (~~((automatically))~~) in the computerized verification process, the secretary must notify the county election management system accordingly. The county auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The county auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver license number or state identification number and the identity is not verified (~~((automatically))~~) in the computerized verification process, the information on the application may be considered a "match" (~~((for purposes of RCW 29A.08.107))~~) if the number on the application exactly matches a number issued by the department of licensing, and it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application ((matches)) describes the person on the department of licensing record ((if)) include, but are not limited to, the following:

(a) The first (~~((or))~~), middle, or last name on the application is a variation of the first (~~((or))~~), middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record; (~~((or~~

~~(d))~~ (g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application ((matches the information maintained by the department of licensing)) describes the person on the department of licensing record, the county auditor ((may)) must override the ((automated)) computerized failure to verify and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

~~(5) ((If the applicant's driver's license or state identification number cannot be considered a match, the county auditor must attempt to contact the applicant to resolve the discrepancy, as required by RCW 29A.08.107. At a minimum, the county auditor must send a verification notice, as required by RCW 29A.08.030, 29A.08.110, and 29A.08.210, and may attempt to contact the applicant by phone or e-mail. The county auditor may attempt to confirm the applicant's driver's license number or state identification number, obtain the last four digits of the applicants's Social Security number, or obtain an alternative form of identification as allowed by RCW 29A.08.113.~~

~~(6) If the applicant provided the last four digits of his or her Social Security number and the identity is not verified automatically, the county auditor must contact the applicant to resolve the discrepancy, as required by RCW 29A.08.107. At a minimum, the county auditor must send a verification notice, as required by RCW 29A.08.030, 29A.08.110, and 29A.08.210, and may attempt to contact the applicant by phone or e-mail. The county auditor may attempt to confirm the last four digits of the applicant's Social Security number, obtain a Washington driver's license number or state identification number, or obtain an alternative form of identification as allowed by RCW 29A.08.113.~~

~~(7) Once the applicant's identity has been verified, the county auditor must change the voter's registration code in the county election management system from pending status to active. Consistent with RCW 29A.08.110, the applicant is considered registered as of the original date of mailing or date of delivery, whichever is applicable.))~~ If the applicant's identity is not verified in the computerized verification process, the applicant must be placed on the official list of registered voters in active status, but the registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.

NEW SECTION

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant's identity is not verified in the computerized verification process outlined in WAC 434-324-040, the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to verify the applicant's identity by contacting the applicant by phone, e-mail or other means.

(2) If the county auditor has not successfully verified the applicant's identity, the county auditor must send the applicant an identity verification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identity verification notice must be in substantially the following form:

Dear Voter:

[date]

Thank you for submitting a voter registration application. You are now registered to vote.

However, federal law requires that you provide identification either before or when you vote. **If you fail to provide identification, your ballot will not be counted.**

Please provide one of the following:

- The number on your Washington driver's license or state ID card: _____

Your name and date of birth as it appears on your driver's license or state ID card:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- The last four digits of your Social Security number: _____

Your name and date of birth as maintained by the Social Security Administration:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- A copy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes absentee, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-055 Duplicate voter registration search conducted by secretary. Upon receipt of an applicant's electronic voter registration record from the auditor, and on a monthly basis (~~((pursuant to WAC 434-324-113(3)))~~), the secretary must search for potential duplicate registration records in the official statewide voter registration data base (~~((, required in RCW 29A.08.651,))~~) by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. Duplicates will be determined by comparing the signatures on all available records. If a voter is transferring his or her registration to a new county or if any other information on the application has been updated, the auditor of the new county must update the registration record (~~((pursuant to RCW 29A.08.107(4)))~~) in the state data base. A duplicate registration record must not be (~~((entered))~~) maintained as a new registration record.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-085 Notice of new registration or transfer. (1) The auditor must send (~~((notification))~~) an acknowledgement notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers his(~~(/)~~) or her registration record within the county;
- (c) Transfers his or her registration record from another

county within Washington state; or

(d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The notice must acknowledge that the request of the individual has been processed and must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.